

00700

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-51325

DATE: OCT 7 1976

MATTER OF: Claims Representatives and Examiners -
Exemption from Fair Labor Standards Act
Overtime Coverage

DIGEST: Union head challenges Civil Service Commission's (CSC) exemption of certain claims representatives and claims examiners from the Fair Labor Standards Act (FLSA). Since CSC is designated by law to administer FLSA with respect to Federal employees, CSC has authority to make final determinations as to an employee's exemption status and GAO will not review such determinations. However, since CSC was not given authority to settle or adjudicate claims under FLSA, GAO retains jurisdiction to finally decide the propriety of payments under FLSA.

This action is in response to a request dated May 6, 1975, reference JC-SSA, from Mr. N. T. Wolkomir, President, National Federation of Federal Employees, who questions the Civil Service Commission's (CSC) determination that claims representatives and claims examiners at the GS-8 and GS-10 grade levels in the Social Security Administration are exempt from the overtime provisions of the Fair Labor Standards Act (FLSA). 29 U.S.C. § 201 et seq.

Mr. Wolkomir contends that the exemption of these employees from the overtime coverage of the FLSA, on the basis that they are administrative employees, is improper. He argues that:

"* * * It does not reflect the intent of Congress in making administrative personnel exempt from this Act if CSC stretches such a definition to include these employees. The CSC says these employees are exempt because they analyze issues, derive conclusions and recommend action in cases. This is not what Congress intended should be administrative work exempt from overtime pay."

Accordingly, Mr. Wolkomir requests that backpay for overtime work uncompensated under the FLSA be granted the employees alleged to have been improperly exempted.

B-51325

On May 1, 1974, the Fair Labor Standards Amendments of 1974, Public Law 93-259, approved April 8, 1974, extended Fair Labor Standards Act coverage to Federal employees. However, "administrative employees" are exempt from FLSA overtime coverage. See 29 U.S.C. § 213(a)(1) (1970). Since the CSC is authorized by the statute to administer the Act with respect to Federal employees, with certain exceptions not pertinent here, 29 U.S.C. § 204 (1974 Supp.), we requested a report from the CSC on the merits of Mr. Wolkowir's contentions. The CSC by letter of April 20, 1976, forwarded us its rationale for exempting grades GS-9 and GS-10 claims representatives and claims examiners from the overtime coverage of the FLSA.

The CSC states that the claims representatives and claims examiners in question meet the criteria which are applicable to a definition of administrative employees under the Act. These criteria are stated in the Federal Personnel Manual (FPM) Letter 551-7, July 1, 1975, at pp. 3-4 of the Attachment to FPM Letter 551-7. The CSC criteria in FPM Letter 551-7 above, are similar to those used by the Department of Labor for determining whether an employee in the private sector is exempt from the overtime provisions of the Act on account of his status as an administrative employee. See 29 C.F.R. § 541.2 (1975).

We consider that the role granted to the Commission to administer the FLSA with respect to Federal employees, necessarily carries with it the authority to make final determinations as to whether employees are covered by the various provisions of the Act. Accordingly, this Office will not review the Commission's determinations as to an employee's exemption status.

However, we would point out that once a determination has been made that an employee is covered by the FLSA's overtime provisions, this Office will consider questions, as it has in the past, concerning the propriety of making payments to employees under the FLSA. 55 Comp. Gen. 908 (1976); B-181317, April 20, 1976, 55 Comp. Gen. ____; B-182576, July 28, 1975. In cases where the General Accounting Office's general authority to adjudicate claims, 31 U.S.C. § 71 (1970), has been limited, it has been accomplished by a specific statutory grant of such

B-51325

authority to another agency. The CSC, for example, has specific statutory authority to adjudicate claims and settle accounts under the classification and retirement laws. See 5 U.S.C. §§ 5112(a) and 8347(b) (1970). However, the Commission has not been given the authority to adjudicate claims or settle accounts under the FLSA. Therefore, the authority to finally settle whether the expenditure of funds under the FLSA is appropriate or not is left by law to the decisions of this Office.

R.F. KELLER

**Deputy Comptroller General
of the United States**